

ESTTA Tracking number: **ESTTA992121**

Filing date: **08/01/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91249209
Party	Defendant RAYHAWK CORPORATION
Correspondence Address	FARAH P. BHATTI BUCHALTER, A PROFESSIONAL CORPORATION 18400 VON KARMAN AVE., SUITE 800 IRVINE, CA 92612 trademark@buchalter.com, fbhatti@buchalter.com no phone number provided
Submission	Answer
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Date	08/01/2019
Attachments	Answer to Notice of Opposition for DR. NEO.pdf(22669 bytes)

3. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 3 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

4. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 4 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

5. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 5 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

6. Applicant admits that it filed an application for DR. NEO for services in Class 44 and that said application was published for Opposition on May 7, 2019. Applicant denies all remaining allegations contained in Paragraph 6.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

10. Opposer has failed to state a claim upon which relief can be granted.

11. There is no likelihood of confusion, mistake or deception between Applicant's mark and the pleaded marks of Opposer because the respective parties' marks are not confusingly similar, including but not limited to the following reasons:

(a) The marks themselves are not confusingly similar as they are different in sound/pronunciation, appearance, connotation and commercial impression;

(b) The respective services are markedly different, the services of the respective parties are noncompetitive and unrelated;

(c) There is no material evidence of actual confusion.

12. Opposer does not have exclusive rights to utilize the term NEO and should not be permitted to monopolize marks that are not confusingly similar to Opposer's mark, especially where Opposer's services are different and distinguishable from the services of others.

13. Opposer's rights in the mark are limited based on the substantial number of third party uses of marks which are similar to those of Opposer and some of which are used in connection with services which are more closely related to the services of Opposer than are those of Applicant.

14. Opposer suffered no damages nor will it suffer damages in the future by Registration of Applicant's mark.

15. The claims alleged by Opposer in the Notice of Opposition are frivolous, alleged with the knowledge that there is no likelihood of confusion between the marks of the respective parties and alleged in bad faith.

